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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

K.S. by her interim guardians ad litem, and
DOROTHY SPIOTTA and PAUL SPIOTTA,

Plaintiffs,

V.

AMBASSADOR PROGRAMS, INC.,
AMBASSADORS GROUP, INC., PEOPLE
TO PEOPLE INTERNATIONAL,

Defendants

No. CV 08-243-FVS

MEMORANDUM IN SUPPORT
OF DEFENDANTS' JOINT
MOTION FOR PROTECTIVE
ORDER AND DEFENDANTS'
JOINT RESPONSE TO
PLAINTIFFS'
MOTION TO COMPEL
AGREEMENTS

I. NATURE OF CASE & RELIEF SOUGHT

The Defendants¹ are parties to several business contracts containing privileged, confidential and proprietary material governing licensing rights, intellectual property rights, compensation, policies and procedures of the Defendants' student travel programs and the intimate details of their relationship. The contents of the contracts have never been disclosed to the public. In this lawsuit, the contracts were fully disclosed to Plaintiffs in discovery pursuant to a stipulated confidentiality agreement protecting the contracts from disclosure to the public, while still permitting Plaintiffs a full opportunity to explore the contractual relationship between the Defendants in this lawsuit. Plaintiffs insist, however, that they should be able to disclose the contents of the contracts to the public. Defendants request that the Court enter a protective order prohibiting the Plaintiffs from disclosing the contents of the contracts to the public and requiring the Plaintiffs to file the contracts under seal if the contracts are filed as part of the Court record. Compelling reasons exist to support the entry of such a protective order because disclosure of the contracts to the public is unnecessary, improper and would substantially harm the Defendants.

¹ Hereafter, the Defendants will be referred to collectively as "Defendants", Defendant People to People International will be referred to as People to People, and Ambassadors Programs, Inc. and Ambassadors Group will be referred to collectively as "Ambassador."

1 II. STATEMENT OF FACTS²

2 Ambassador and People to People are parties to several contracts containing
 3 confidential and proprietary matter relating to licensing rights, intellectual property rights,
 4 compensation, policies and procedures. Decl. Bodholt, ¶ 3. These contracts are securely
 5 maintained and access is limited to only a few of Defendants' senior executive members.
 6 Decl. Bodholt, ¶ 12; Decl. Eisenhower, ¶ 16. The contracts have never been publicly
 7 disclosed and when produced in the discovery phase of any lawsuit, have always been
 8 subject to strict protection under court order, recognizing and protecting the confidential and
 9 private nature of the information and the proprietary nature of the business information
 10 contained within the contracts. Decl. Bodholt, ¶ 11; Decl. Eisenhower, ¶ 13.

13 During the discovery phase of this lawsuit, the contracts were produced to Plaintiffs
 14 under a stipulated agreement prohibiting the Plaintiffs from disclosing the contracts to the
 15 public, but still permitting the Plaintiffs a full opportunity to review the contracts and
 16 explore the contractual relationship between the Defendants for use in this lawsuit. Decl.
 17 Eisenhower, ¶ 4. Mary Eisenhower, President and CEO of People to People, and Jeff
 18 Thomas, CEO of Ambassador Programs and CEO and President of Ambassadors Group,
 19 were both deposed in this lawsuit; they were thoroughly questioned about the contracts and
 20 the Defendants' relationship for use in this litigation. *Id.* The contents of the depositions
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23 ² Defendants incorporate the declarations of Kell Bodholt and Mary Eisenhower.
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1 wherein the contracts were discussed were sealed pursuant to the parties' agreement
 2 pertaining to the contracts.

3 The Defendants' contracts spell out Ambassador's right, and the restrictions on
 4 Ambassador's right, to use the trademark-registered and protected People to People service
 5 mark and logo in the educational student travel and exchange programs that Ambassador
 6 conducts. Decl. Bodholt, ¶ 4. The service marks and logos have value to People to People,
 7 and to Ambassador's student travel and exchange programs. Decl. Eisenhower, ¶ 7. The
 8 contracts also speak to the terms of, and the restrictions on, People to People's ability to run
 9 travel programs; disclosure of this information would arm Ambassador's competitors,
 10 thereby harming Defendants. Decl. Bodholt, ¶¶ 4, 9; Decl. Eisenhower, ¶ 8. The contracts
 11 specifically govern the Defendants' use of each other's confidential and proprietary
 12 information (the result of many years of development and investment and cultivation) which
 13 is necessarily disclosed and shared between the Defendants. Bodholt, ¶ 5; Decl.
 14 Eisenhower, ¶ 8.

15 The contracts also reveal the intimate details and expectations of the Defendants'
 16 relationship; these details are viewed and maintained as confidential and proprietary by the
 17 Defendants and are considered extremely valuable in that they provide a model for
 18 educational travel that makes Ambassador's educational travel and exchange programs both
 19 unique and successful. Bodholt, ¶¶ 6, 7; Eisenhower, ¶¶ 9, 10. These details, if disclosed
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1 after being kept confidential for more than a decade, would give Ambassador's competitors
 2 an instant competitive advantage, thereby substantially harming Ambassador. *Id.*
 3 Disclosure of the terms of the Defendants' contracts also has the potential to harm People
 4 to People's fund-raising activities and efforts which would result in injury to People to
 5 People's ongoing programs in this country and around the world. Decl. Eisenhower, ¶ 15.

7 **III. ARGUMENT**

8 **A. The Court Has Broad Discretion Under Federal Rule of Civil Procedure 26 To 9 Prevent Disclosure of Commercial Information To Protect Private Parties.**

10 Under Federal Rule of Civil Procedure 26(c), the Court may, "for good cause, issue
 11 an order to protect a party or person from annoyance, embarrassment, oppression or undue
 12 burden or expense, including": (1) forbidding the disclosure or discovery of specific
 13 information, (2) requiring that a deposition, or portions of depositions, be sealed, (3) requiring
 14 that a trade secret or other confidential research, development, or commercial
 15 information not be revealed or be revealed only in a specified way. Fed.R.Civ.P.
 16 26(c)(1)(A), (F) and (G). The Supreme Court has interpreted Rule 26(c) as conferring
 17 "broad discretion on the trial court to decide when a protective order is appropriate and what
 18 degree of protection is required." *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984).
 19 Rule 26(c) gives the Court "much flexibility in balancing and protecting the interests of
 20 private parties." *Kamakana v. Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006).

A "good cause" showing is sufficient to seal documents produced in discovery and when filed with the Court in connection with nondispositive motions. *Id.* "Compelling reasons" will support the sealing of documents attached to dispositive motions. *Id.* Here, both standards are satisfied: the Defendants' contracts should not be disclosed to the public during the discovery phase and the contracts should be filed under seal if filed as part of the Court record.

1. Compelling Reasons Exist To Enter A Protective Order Sealing The Defendants' Contracts If Filed In The Court Record.

A demonstration of "compelling reasons" is sufficient to support the entry of a protective order requiring the parties to file the Defendants' contracts under seal, if made part of the Court record on a dispositive motion. Under the compelling reasons standard, the court weighs relevant factors; the Court's analysis is reviewed for abuse of discretion.

Pintos v. Pac. Creditors Assoc., 565 F.3d 1106, 1116 (9th Cir. 2009). "Relevant factors include the public interest in understanding the judicial process and whether disclosure could result in improper use of the material for scandalous or libelous purposes or infringement upon trade secrets." *Id.*, n. 6; *Kamakana*, 447 F.3d at 1179 ("In general 'compelling reasons' sufficient to justify sealing court records exist when such court files might have become a vehicle for improper purposes, such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade

1 secrets.”) (citing *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)). In *Nixon*, the
 2 U.S. Supreme Court established that “the right to inspect and copy judicial records is not
 3 absolute,” and in particular, “the common-law right of inspection has bowed before the
 4 power of a court to insure that its records are not used . . . as sources of business information
 5 that might harm a litigant’s competitive standing.” 435 U.S. at 598.
 6

7 That is precisely the sort of information Defendants seek to seal in this case. The
 8 contracts protect People to People’s service marks and logos, which have significant value
 9 to People to People, and value to the educational student travel programs operated by
 10 Ambassador. Decl. Eisenhower, at 7. The details of the contracts are extremely valuable
 11 in that they provide a model for education travel that is unusual and unique to the industry;
 12 disclosure of this detailed information to the general public is unnecessary, improper and
 13 would result in significant harm to the Defendants. See Decl. Bodholt and Decl.
 14 Eisenhower. If Defendants’ competitors were able to access the confidential and proprietary
 15 information contained in Defendants’ contracts and the intimate details of Ambassador’s
 16 model for educational and travel programs, it would give them a specific and significant
 17 competitive advantage, thereby harming the Defendants. Release of the confidential and
 18 proprietary information embodied in the contracts, including the specific and detailed
 19 information regarding royalties and methods of operation, would lead to a substantial
 20 competitive advantage for the Defendants’ competitors and would result in undue burden
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1 an expense to the Defendants. *Id.*; see e.g., *Reilly v. Nedianews Group Inc.*, 2007 WL
 2 196682 (N.D. Cal. 2007).

3 Defendants have established compelling reasons for the entry of a protective order;
 4 the affidavits of Kell Bodholt and Mary Eisenhower establish that disclosure of the
 5 Defendants' contracts to the public would serve no legitimate purpose, but would cause
 6 significant and substantial harm to the Defendants who have not been, and may not ever be,
 7 found liable for anything. Further, the public interest in understanding the judicial process
 8 will not be hindered in any way by sealing the Defendants' contracts. The Court should
 9 grant Defendants' motion and enter a protective order requiring Plaintiffs to file the
 10 Defendants' contracts (and the sealed portions of the deposition transcripts of Ms.
 11 Eisenhower and Mr. Thomas) under seal if made part of the Court record on a dispositive
 12 motion.

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**2. Good Cause Exists To Maintain The Confidentiality Of The Defendants'
 14 Contracts During The Discovery Phase Of This Lawsuit And In
 15 Connection With Any Pretrial Motions Filed With The Court.**

16 Upon a showing of "good cause" the Court has broad latitude to enter an order
 17 requiring that "a trade secret or other confidential research, development, or commercial
 18 information not be revealed or be revealed only in a specified way." Fed.R.Civ.P.
 19 26(c)(1)(G); *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002). A
 20 showing under the "good cause" standard of Rule 26(c) is sufficient to warrant preserving
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1 the confidentiality of material disclosed throughout discovery, as well as materials filed with
 2 the Court attached to pretrial motions. *Kamakana*, 447 F.3d at 1180. "Good cause" exists
 3 when specific prejudice or harm will result if no protective order is granted. *Phillips*, 307
 4 F.3d at 1210-11.
 5

6 As established above, Defendants have set forth compelling reasons supporting the
 7 entry of a protective order requiring that the Defendants' contracts be filed under seal if
 8 made part of the Court record in a dispositive motion. Since the declarations of Mary
 9 Eisenhower and Kell Bodholt establish compelling reasons for sealing the Defendants'
 10 contracts, their declarations certainly establish the lower burden under the "good cause"
 11 standard. *See Pintos v. Pacific Creditors Assoc.*, 565 F.3d 1106, 1115 (9th Cir. 2009).
 12 Their declarations explain the specific harm and prejudice that will be suffered if a
 13 protective order is not entered precluding Plaintiffs from disclosing the Defendants'
 14 contracts to the public during this litigation and requiring Plaintiffs to file the contracts (and
 15 the sealed portions of the deposition transcripts of Ms. Eisenhower and Mr. Thomas) under
 16 seal if submitted to the Court.
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IV. CONCLUSION

21 The Defendants request the Court exercise its discretion and enter a protective order
 22 preventing the Defendants' contracts, and the confidential and proprietary information
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1 contained therein, from being made available to the general public and to the Defendants
2 competitors. Specifically, the Defendants request an order from the Court that:

- 3 1. Defendants have established good cause to support the entry of a protective order;
- 4 2. Plaintiffs are required to maintain the confidentiality of the contracts (and the
5 sealed portions of the deposition transcripts of Ms. Eisenhower and Mr. Thomas)
6 throughout this lawsuit;
- 7 3. Plaintiffs shall use the contracts (and the sealed portions of the deposition
8 transcripts of Ms. Eisenhower and Mr. Thomas) solely for purpose of preparation for and
9 trial of this action;
- 10 4. The contracts (and the sealed portions of the deposition transcripts of Ms.
11 Eisenhower and Mr. Thomas) shall only be disclosed or revealed to the parties, their
12 counsel, and all persons working for Plaintiffs' and Defendants' counsel.
- 13 5. Plaintiffs are required to file the contracts (and the sealed portions of the
14 deposition transcripts of Ms. Eisenhower and Mr. Thomas) under seal in connection with
15 any pretrial motion or matter;
- 16 6. Defendants have established compelling reasons to support the entry of a
17 protective order requiring the Plaintiffs to file the contracts (and the sealed portions of the
18 deposition transcripts of Ms. Eisenhower and Mr. Thomas) under seal when made part of
19 the Court record in connection with any dispositive motion.

1 DATED this 30th day of October 2009.

2 EVANS, CRAVEN & LACKIE, P.S.

3 WITHERSPOON, KELLEY,
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5 /s/ James B. King

6 /s/ Geana M. Van Dessel

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18 Counsel for Defendants Ambassador
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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of October 2009:

1. I electronically filed the foregoing **Memorandum in Support of Defendants' Joint Motion for Protective Order** and **Defendants' Joint Response to Plaintiffs' Motion to Compel Agreements** with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Timothy K. Ford: timf@mhb.com, adanap@mhb.com,
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2. I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants at the address listed below: NONE.
 3. I hereby certify that I have hand delivered the document to the following participants at the address listed below: NONE.

/s/ Emily Rousseau

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